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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

A.F., by and through his guardian *ad litem* Erica Brand, individually and as a successor in interest to Aaron Forgash, deceased; J.A., by and through his guardian *ad litem* Jamie Austin, individually and as a successor in interest to Aaron Forgash, deceased; and TERI JECMEN, individually,

Plaintiffs,

vs.

COUNTY OF RIVERSIDE;
MICHAEL HEURER; ROBERT
POWE; SERGIO RODRIGUEZ;
CHAD FOUNTAIN; and DOES 1-10,
inclusive,

Defendants.

Case No. 5:15-cv-01603-JGB-DTB

**SECOND AMENDED COMPLAINT
FOR DAMAGES**

1. Unreasonable Search and Seizure—Detention and Arrest (42 U.S.C. § 1983)
2. Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)
3. Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)
4. Due Process—Interference with Familial Relationship (42 U.S.C. § 1983)
5. Municipal Liability – Ratification (42 U.S.C. § 1983)
6. Municipal Liability – Inadequate Training (42 U.S.C. § 1983)
7. Municipal Liability – Unconstitutional Custom, Practice, or Policy (42 U.S.C. § 1983)
8. False Arrest/False Imprisonment
9. Battery (wrongful death)
10. Negligence (wrongful death)
11. Violation of Cal. Civil Code § 52.1

DEMAND FOR JURY TRIAL

1 **SECOND AMENDED COMPLAINT FOR DAMAGES**

2 COME NOW Plaintiffs A.F., a minor, by and through his guardian *ad litem*
3 Erica Brand, individually and as a successor in interest to Aaron Forgash, deceased,
4 J.A., a minor, by and through his guardian *ad litem* Jamie Austin, individually and
5 as a successor in interest to Aaron Forgash, deceased, and Teri Jecmen, individually,
6 for their Complaint against Defendants County of Riverside, Michael Heurer,
7 Robert Powe, Sergio Rodriguez, Chad Fountain, and Does 3-10, inclusive, and
8 allege as follows:

9
10 **JURISDICTION AND VENUE**

11 1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331
12 and 1343(a)(3)-(4) because Plaintiffs assert claims arising under the laws of the
13 United States including 42 U.S.C. § 1983 and the Fourth and Fourteenth
14 Amendments of the United States Constitution. This Court has supplemental
15 jurisdiction over Plaintiffs' claims arising under state law pursuant to 28 U.S.C. §
16 1367(a), because those claims are so related to the federal claims that they form part
17 of the same case or controversy under Article III of the United States Constitution.

18 2. Venue is proper in this Court under 28 U.S.C. § 1391(b) because
19 Defendants reside in this district and all incidents, events, and occurrences giving
20 rise to this action occurred in this district.

21
22 **INTRODUCTION**

23 3. This civil rights and state tort action seeks compensatory and punitive
24 damages from Defendants for violating various rights under the United States
25 Constitution and state law in connection with the fatal officer-involved shooting of
26 Plaintiffs' father and son, Aaron Forgash ("DECEDENT"), on November 11, 2014.

PARTIES

4. At all relevant times, DECEDENT was an individual residing in the City of Long Beach, California.

5. Plaintiff TERI JECMEN ("JECMEN") is an individual residing in the City of Huntington Beach, California and is the natural mother of DECEDENT. JECMEN sues in her individual capacity as the mother of DECEDENT. JECMEN seeks both survival and wrongful death damages under federal law.

6. Plaintiff A.F., a minor, is an individual residing in the City of Long Beach, California and is the natural son of DECEDENT. A.F. sues in his individual capacity as the son of DECEDENT and also as a successor in interest to DECEDENT. A.F. seeks both survival and wrongful death damages under federal and state law.

7. Plaintiff J.A., a minor, is an individual residing in the City of San Pedro, California and is the natural son of DECEDENT. J.A. sues in his individual capacity as the son of DECEDENT and also as a successor in interest to DECEDENT. J.A. seeks both survival and wrongful death damages under federal and state law.

8. At all relevant times, Defendant COUNTY OF RIVERSIDE ("COUNTY") is and was a municipal corporation existing under the laws of the State of California. COUNTY is a chartered subdivision of the State of California with the capacity to be sued. COUNTY is responsible for the actions, omissions, policies, procedures, practices, and customs of its various agents and agencies, including the Riverside County Sheriff's Department and its agents and employees. At all relevant times, Defendant COUNTY was responsible for assuring that the actions, omissions, policies, procedures, practices, and customs of the Riverside County Sheriff's Department and its employees and agents complied with the laws of the United States and of the State of California. At all relevant times, COUNTY

1 was the employer of Defendants MICHAEL HEURER, ROBERT POWE, SERGIO
2 RODRIGUEZ, and DOES 3-10.

3 9. Defendants MICHAEL HEURER ("HEURER"), ROBERT POWE
4 ("POWE"), and SERGIO RODRIGUEZ ("RODRIGUEZ") are deputy sheriffs or
5 employees working for the Riverside County Sheriff's Department. HEURER,
6 POWE, and RODRIGUEZ were acting under color of law within the course and
7 scope of their duties as deputy sheriffs or employees for the Riverside County
8 Sheriff's Department. HEURER, POWE, and RODRIGUEZ were acting with the
9 complete authority and ratification of their principal, Defendant COUNTY
10 10. Defendant CHAD FOUNTAIN ("FOUNTAIN") is or was at the time
11 of the incident a police officer working for the City of Corona Police Department.
12 FOUNTAIN was acting under color of law within the course and scope of his duties
13 as an officer for the City of Corona Police Department. FOUNTAIN was acting with
14 the complete authority and ratification of his principal, City of Corona.

15 11. Defendants DOES 3-5 ("DOE DEPUTIES") are deputy sheriffs
16 working for the Riverside County Sheriff's Department. DOE DEPUTIES were
17 acting under color of law within the course and scope of their duties as sheriff's
18 deputies for the Riverside County Sheriff's Department. DOE DEPUTIES were
19 acting with the complete authority and ratification of their principal, Defendant
20 COUNTY.

21 12. Defendants DOES 6-8 are supervisory officers for the Riverside
22 County Sheriff's Department who were acting under color of law within the course
23 and scope of their duties as police officers for the Riverside County Sheriff's
24 Department. DOES 6-8 were acting with the complete authority and ratification of
25 their principal, Defendant COUNTY.

26 13. Defendants DOES 9-10 are managerial, supervisory, and
27 policymaking employees of the Riverside County Sheriff's Department, who were
28 acting under color of law within the course and scope of their duties as managerial,

1 supervisorial, and policymaking employees for the Riverside County Sheriff's
2 Department. DOES 9-10 were acting with the complete authority and ratification of
3 their principal, Defendant COUNTY.

4 14. On information and belief, DOES 1-10 were residents of the County of
5 Riverside.

6 15. In doing the acts and failing and omitting to act as hereinafter
7 described, Defendants POWE, HEURER, RODRIGUEZ, and DOE DEPUTIES
8 were acting on the implied and actual permission and consent of Defendants DOES
9 6-10.

10 16. In doing the acts and failing and omitting to act as hereinafter
11 described, Defendants POWE, HEURER, RODRIGUEZ, and DOES 3-10 were
12 acting on the implied and actual permission and consent of the COUNTY.

13 17. The true names and capacities, whether individual, corporate,
14 association or otherwise of Defendants DOES 3-10, inclusive, are unknown to
15 Plaintiffs, who otherwise sues these Defendants by such fictitious names. Plaintiffs
16 will seek leave to amend their complaint to show the true names and capacity of
17 these Defendants when they have been ascertained. Each of the fictitiously-named
18 Defendants is responsible in some manner for the conduct or liabilities alleged
19 herein.

20 18. At all times mentioned herein, each and every defendant was the agent
21 of each and every other defendant and had the legal duty to oversee and supervise
22 the hiring, conduct, and employment of each and every defendant.

23 19. All of the acts complained of herein by Plaintiffs against Defendants
24 were done and performed by said Defendants by and through their authorized
25 agents, servants, and/or employees, all of whom at all relevant times herein were
26 acting within the course, purpose, and scope of said agency, service, and/or
27 employment capacity. Moreover, Defendants and their agents ratified all of the acts
28 complained of herein.

1 20. HEURER, POWE, RODRIGUEZ, FOUNTAIN, and DOES 3-10 are
2 sued in their individual capacity.

3 21. On or around April 14, 2015, Plaintiffs filed comprehensive and timely
4 claims for damages with the County of Riverside pursuant to applicable sections of
5 the California Government Code.

6 22. On May 18, 2015, the County of Riverside denied said claims.
7

8 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

9 23. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
10 through 22 of their Complaint with the same force and effect as if fully set forth
11 herein.

12 24. On November 11, 2014, at approximately 2:20 p.m. in Perris,
13 California, Defendants HEURER and POWE shot DECEDENT without justification
14 after stopping DECEDENT in his vehicle. At the time of the shooting, DECEDENT
15 was unarmed and did not pose an imminent threat of death or serious bodily injury
16 to Defendants or anyone else. DECEDENT died at the scene.

17 25. After being shot, RODRIGUEZ commanded FOUNTAIN to release a
18 K-9 on DECEDENT, despite knowing that DECEDENT was immobile, bleeding
19 profusely, and in obvious and critical need of emergency medical care and
20 treatment. FOUNTAIN did release a K-9 on DECEDENT. At the time that
21 RODRIGUEZ commanded FOUNTAIN to release the K-9, and also at the time that
22 FOUNTAIN did release the K-9, DECEDENT did not pose an imminent threat of
23 death or serious bodily injury to Defendants or anyone else.

24 26. After being shot, DECEDENT was immobile, bleeding profusely, and
25 in obvious and critical need of emergency medical care and treatment. Defendants
26 did not timely summon medical care or permit medical personnel to treat
27 DECEDENT. The delay of medical care to DECEDENT caused DECEDENT
28

1 extreme physical and emotional pain and suffering, and was a contributing cause of
2 DECEDENT's death.

3 27. The use of deadly force against DECEDENT was excessive and
4 objectively unreasonable under the circumstances, especially because DECEDENT
5 did not pose an immediate threat of death or serious bodily injury to anyone at the
6 time of the shooting.

7 28. Plaintiffs A.F. and J.A. are DECEDENT's successors in interest as
8 defined in Section 377.11 of the California Code of Civil Procedure and succeed to
9 DECEDENT's interest in this action as the natural children of DECEDENT.

10 29. Plaintiffs were financially dependent on DECEDENT for the
11 necessities of life.

12 30. Plaintiffs incurred funeral and burial expenses as a result of the
13 shooting.

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15

FIRST CLAIM FOR RELIEF

16

Unreasonable Search and Seizure—Detention and Arrest (42 U.S.C. § 1983)

17

(By Plaintiffs J.A. and A.F. against Defendants HEURER, POWE and DOE

18

DEPUTIES)

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20 31. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
21 through 30 of their Complaint with the same force and effect as if fully set forth
22 herein.

23 32. Defendants HEURER, POWE and DOE DEPUTIES detained
24 DECEDENT without reasonable suspicion and arrested him without probable cause.

25 33. When Defendants HEURER and POWE pointed a gun at DECEDENT,
26 shot DECEDENT, and when Defendants placed him in handcuffs, they violated
27 DECEDENT's right to be secure in his person against unreasonable searches and
28 seizures as guaranteed to DECEDENT under the Fourth Amendment to the United
States Constitution and applied to state actors by the Fourteenth Amendment.

1 34. The conduct of Defendants HEURER, POWE and DOE DEPUTIES
2 was willful, wanton, malicious, and done with reckless disregard for the rights and
3 safety of DECEDENT and therefore warrants the imposition of exemplary and
4 punitive damages as to Defendants HEURER, POWE and DOE DEPUTIES.

5 35. As a result of their misconduct, Defendants HEURER, POWE and
6 DOE DEPUTIES are liable for DECEDENT's injuries, either because they were
7 integral participants in the wrongful detention and arrest, or because they failed to
8 intervene to prevent these violations.

9 36. Plaintiffs A.F. and J.A. bring their claim as a successors in interest to
10 DECEDENT, and seek both survival and wrongful death damages for the violation
11 of DECEDENT's rights. Plaintiffs further seek attorney's fees under this claim.

12 **SECOND CLAIM FOR RELIEF**

13 **Unreasonable Search and Seizure—Excessive Force (42 U.S.C. § 1983)**

14 (By Plaintiffs J.A. and A.F. against Defendants HEURER, POWE, RODRIGUEZ,
15 and FOUNTAIN)

16 37. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
17 through 36 of their Complaint with the same force and effect as if fully set forth
18 herein.

19 38. Defendants HEURER's and POWE's unjustified shooting deprived
20 DECEDENT of his right to be secure in his person against unreasonable searches
21 and seizures as guaranteed to him under the Fourth Amendment to the United States
22 Constitution and applied to state actors by the Fourteenth Amendment.

23 39. RODRIGUEZ commanding FOUNTAIN to release the K-9 on
24 DECEDENT at a time when DECEDENT posed no threat of death or serious bodily
25 injury also deprived DECEDENT of his right to be secure in his person against
26 unreasonable searches and seizures as guaranteed to him under the Fourth
27 Amendment to the United States Constitution and applied to state actors by the
28 Fourteenth Amendment.

1 40. FOUNTAIN releasing the K-9 on DECEDENT at a time when
2 DECEDENT posed no threat of death or serious bodily injury also deprived
3 DECEDENT of his right to be secure in his person against unreasonable searches
4 and seizures as guaranteed to him under the Fourth Amendment to the United States
5 Constitution and applied to state actors by the Fourteenth Amendment.

6 41. As a result of the foregoing, DECEDENT suffered great physical pain
7 and emotional distress up to the time of his death, loss of enjoyment of life, loss of
8 life, and loss of earning capacity.

9 42. The conduct of Defendants HEURER, POWE, RODRIGUEZ,
10 FOUNTAIN and DOE DEPUTIES was willful, wanton, malicious, and done with
11 reckless disregard for the rights and safety of DECEDENT, and therefore warrants
12 the imposition of exemplary and punitive damages as to Defendants HEURER,
13 POWE, RODRIGUEZ, FOUNTAIN and DOE DEPUTIES.

14 43. The shooting was excessive and unreasonable, and DECEDENT posed
15 no immediate threat of death or serious bodily injury at the time of the shooting.
16 Further, Defendants HEURER's and POWE's shooting and use of force violated
17 their training and standard police officer training.

18 44. RODRIGUEZ commanding FOUNTAIN to release the K-9 as set forth
19 above was also excessive and unreasonable and also violated RODRIGUEZ'
20 training and standard police officer training.

21 45. FOUNTAIN releasing the K-9 as set forth above was also excessive
22 and unreasonable and also violated FOUNTAIN'S training and standard police
23 officer training.

24 46. Plaintiffs A.F. and J.A. bring their claim as successors in interest to
25 DECEDENT, and seek both survival and wrongful death damages for the violation
26 of DECEDENT's rights. Plaintiffs further seek attorney's fees under this claim.

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THIRD CLAIM FOR RELIEF

Unreasonable Search and Seizure—Denial of Medical Care (42 U.S.C. § 1983)

(By Plaintiffs J.A. and A.F. against Defendants HEURER, POWE, RODRIGUEZ, FOUNTAIN and DOE DEPUTIES)

47. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 46 of their Complaint with the same force and effect as if fully set forth herein.

48. The denial of medical care by Defendants HEURER, POWE, RODRIUGEZ, FOUNTAIN, and DOE DEPUTIES deprived DECEDENT of his right to be secure in his person against unreasonable searches and seizures as guaranteed to him under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

49. As a result of the foregoing, DECEDENT suffered great physical pain and emotional distress up to the time of his death, loss of enjoyment of life, loss of life, and loss of earning capacity.

50. Defendants HEURER, POWE, RODRIUGEZ, FOUNTAIN, and DOE DEPUTIES knew that failure to provide timely medical treatment to DECEDENT could result in further significant injury or the unnecessary and wanton infliction of pain, but disregarded that serious medical need, causing DECEDENT great bodily harm and death.

51. The conduct of HEURER, POWE, RODRIUGEZ, FOUNTAIN, and DOE DEPUTIES was willful, wanton, malicious, and done with reckless disregard for the rights and safety of DECEDENT and therefore warrants the imposition of exemplary and punitive damages as to Defendants HEURER, POWE and DOE DEPUTIES.

52. As a result of their misconduct, Defendants HEURER, POWE, RODRIUGEZ, FOUNTAIN, and DOE DEPUTIES are liable for DECEDENT's

1 injuries, either because they were integral participants in the wrongful detention and
2 arrest, or because they failed to intervene to prevent these violations.

3 53. Plaintiffs A.F. and J.A. bring their claim as a successors in interest to
4 DECEDENT, and seek both survival and wrongful death damages for the violation
5 of DECEDENT's rights. Plaintiffs further seek attorney's fees under this claim.
6

7 **FOURTH CLAIM FOR RELIEF**

8 **Due Process—Interference with Familial Relationship (42 U.S.C. § 1983)**

9 (By all Plaintiffs against Defendants HEURER, POWE, RODRIUGEZ,
10 FOUNTAIN, and DOE DEPUTIES)

11 54. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
12 through 43 of their Complaint with the same force and effect as if fully set forth
13 herein.

14 55. Plaintiff JECMEN had a cognizable interest under the Due Process
15 Clause of the Fourteenth Amendment of the United States Constitution to be free
16 from state actions that deprive her of life, liberty, or property in such a manner as to
17 shock the conscience, including but not limited to unwarranted state interference in
18 her familial relationship with her son, DECEDENT.

19 56. Plaintiff A.F. had a cognizable interest under the Due Process Clause of
20 the Fourteenth Amendment of the United States Constitution to be free from state
21 actions that deprive her of life, liberty, or property in such a manner as to shock the
22 conscience, including but not limited to unwarranted state interference in Plaintiff's
23 familial relationship with his father, DECEDENT.

24 57. Plaintiff J.A. had a cognizable interest under the Due Process Clause of
25 the Fourteenth Amendment of the United States Constitution to be free from state
26 actions that deprive her of life, liberty, or property in such a manner as to shock the
27 conscience, including but not limited to unwarranted state interference in Plaintiff's
28 familial relationship with his father, DECEDENT.

1 58. The aforementioned actions of HEURER, POWE and DOE
2 DEPUTIES, along with other undiscovered conduct, shock the conscience, in that
3 they acted with deliberate indifference to the constitutional rights of DECEDENT
4 and Plaintiffs, and with purpose to harm unrelated to any legitimate law
5 enforcement objective.

6 59. HEURER, POWE, RODRIUGEZ, FOUNTAIN, and DOE DEPUTIES
7 thus violated the substantive due process rights of Plaintiffs to be free from
8 unwarranted interference with their familial relationship with DECEDENT, their
9 father and son.

10 60. As a direct and proximate cause of the acts of HEURER, POWE
11 RODRIUGEZ, FOUNTAIN, and DOE DEPUTIES, all Plaintiffs suffered emotional
12 distress, mental anguish, and pain. Plaintiffs have also been deprived of the life-
13 long love, companionship, comfort, support, society, care, and sustenance of
14 DECEDENT, and will continue to be so deprived for the remainder of their natural
15 lives.

16 61. The conduct of HEURER, POWE, RODRIUGEZ, FOUNTAIN, and
17 DOE DEPUTIES was willful, wanton, malicious, and done with reckless disregard
18 for the rights and safety of DECEDENT and Plaintiffs and therefore warrants the
19 imposition of exemplary and punitive damages as to Defendants HEURER, POWE
20 and DOE DEPUTIES.

21 62. Plaintiffs A.F. and J.A. bring their claim as successors in interest to
22 DECEDENT, and seek both survival and wrongful death damages for the violation
23 of DECEDENT's rights.

24 63. Plaintiff JECMEN brings her claim individually and seeks both
25 survival and wrongful death damages for the violation of DECEDENT's rights.
26 Plaintiff JECMEN also seeks funeral and burial expenses.

27 64. All Plaintiffs seek attorney's fees under this claim.
28

FIFTH CLAIM FOR RELIEF

Municipal Liability – Ratification (42 U.S.C. § 1983)

(By Plaintiffs J.A. and A.F. against Defendants COUNTY and DOES 6-10)

65. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 64 of their Complaint with the same force and effect as if fully set forth herein.

66. Defendants HEURER, POWE, RODRIGUEZ, and DOE DEPUTIES acted under color of law;

67. The acts of Defendants HEURER, POWE, RODRIGUEZ, and DOE DEPUTIES deprived DECEDENT and Plaintiffs of their particular rights under the United States Constitution.

68. Upon information and belief, a final policymaker, acting under color of law, who had final policymaking authority concerning the acts of Defendants HEURER, POWE, and DOE DEPUTIES, ratified (or will ratify) Defendants HEURER's, POWE's, and DOE DEPUTIES' acts and the bases for them. Upon information and belief, the final policymaker knew of and specifically approved of (or will specifically approve of) Defendants HEURER's, POWE's, and DOE DEPUTIES' acts.

69. Upon information and belief, a final policymaker has determined (or will determine) that the acts of Defendants HEURER, POWE, and DOE DEPUTIES were "within policy."

70. On information and belief, Defendants HEURER, POWE, RODRIGUEZ and DOE DEPUTIES were not disciplined, reprimanded, retrained, suspended, or otherwise penalized in connection with DECEDENT's death.

71. The following are only a few examples of cases where the involved deputies were not disciplined, reprimanded, retrained, suspended, or otherwise penalized in connection with the underlying acts giving rise to the below lawsuits, which indicates that the County of Riverside routinely ratifies such behavior:

1 (a) In *Howard v. County of Riverside, et al.*, case number 5:12-cv-
2 00700, Defendant County of Riverside argued that the use of deadly
3 force against an unarmed individual was reasonable; a federal jury
4 found otherwise and returned a \$7.8 million verdict in favor of William
5 Howard, an unarmed man who suffered a severe brain injury and
6 partial paralysis after being shot in the face by a County of Riverside
7 sheriff's deputy;

8 (b) In *Travillion v. County of Riverside*, case number EDCV 14-0003
9 VAP (DTBx), the County of Riverside settled for \$350,000 with the
10 family of a man who was shot and killed by a sheriff's deputy working
11 for the County of Riverside;

12 (c) In *Bosch v. County of Riverside*, case number EDCV 13-02352
13 (SVW)(FFM), the County of Riverside settled for \$1.5 million with the
14 family of an unarmed man who was shot and killed by a sheriff's
15 deputy working for the County of Riverside at a time when the man
16 posed no immediate threat of death or serious bodily injury;

17 (d) In *Castillo v. County of Riverside*, case number EDCV 13-00789
18 VAP (SPx), the County of Riverside settled for \$750,000 with the
19 family of a man who was shot and killed by a sheriff's deputy working
20 for the County of Riverside;

21 (e) In *Munoz v. County of Riverside*, case number RIC120794, Plaintiff
22 argued that the involved Riverside County sheriff's deputy used deadly
23 force against her son at a time when he posed no immediate threat. The
24 jury in that case returned a \$1.2 million verdict against Defendant
25 County of Riverside in favor of Plaintiff.

26 72. By reason of the aforementioned acts and omissions, Plaintiffs have
27 suffered loss of the love, companionship, affection, comfort, care, society, training,
28 guidance, and past and future support of DECEDENT. The aforementioned acts and

1 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
2 and death.

3 73. Accordingly, Defendants COUNTY and DOES 6-10 each are liable to
4 Plaintiffs for compensatory damages under 42 U.S.C. § 1983.

5 74. Plaintiffs A.F. and J.A. bring this claim as successors in interest to
6 DECEDENT, and seek both survival and wrongful death damages under this claim.
7 Plaintiffs also seek attorney's fees under this claim.

8
9 **SIXTH CLAIM FOR RELIEF**

10 **Municipal Liability – Failure to Train (42 U.S.C. § 1983)**

11 (By Plaintiffs J.A. and A.F. against Defendants COUNTY and DOES 6-10)

12 75. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
13 through 74 of their Complaint with the same force and effect as if fully set forth
14 herein.

15 76. Defendants HEURER, POWE, RODRIGUEZ and DOE DEPUTIES
16 acted under color of law;

17 77. The acts of Defendants HEURER, POWE, RODRIGUEZ and DOE
18 DEPUTIES deprived DECEDENT and Plaintiffs of their particular rights under the
19 United States Constitution.

20 78. The training policies of Defendant COUNTY were not adequate to
21 train its deputies to handle the usual and recurring situations with which they must
22 deal.

23 79. Defendant COUNTY was deliberately indifferent to the obvious
24 consequences of its failure to train its officers adequately.

25 80. The failure of Defendant COUNTY to provide adequate training caused
26 the deprivation of the plaintiffs' rights by Defendants HEURER, POWE,
27 RODRIGUEZ and DOE DEPUTIES; that is, the defendant's failure to train is so
28 closely related to the deprivation of the Plaintiffs' rights as to be the moving force

1 that caused the ultimate injury. The following are only a few examples of continued
2 misconduct by sheriff's deputies working for the County of Riverside, which
3 indicate the County of Riverside's failure to properly train its sheriff's deputies:

4 (a) In *Howard v. County of Riverside, et al.*, case number 5:12-cv-
5 00700, Defendant County of Riverside argued that the use of deadly
6 force against an unarmed individual was reasonable; a federal jury
7 found otherwise and returned a \$7.8 million verdict in favor of William
8 Howard, an unarmed man who suffered a severe brain injury and
9 partial paralysis after being shot in the face by a County of Riverside
10 sheriff's deputy;

11 (b) In *Travillion v. County of Riverside*, case number EDCV 14-0003
12 VAP (DTBx), the County of Riverside settled for \$350,000 with the
13 family of a man who was shot and killed by a sheriff's deputy working
14 for the County of Riverside;

15 (c) In *Bosch v. County of Riverside*, case number EDCV 13-02352
16 (SVW)(FFM), the County of Riverside settled for \$1.5 million with the
17 family of an unarmed man who was shot and killed by a sheriff's
18 deputy working for the County of Riverside at a time when the man
19 posed no immediate threat of death or serious bodily injury;

20 (d) In *Castillo v. County of Riverside*, case number EDCV 13-00789
21 VAP (SPx), the County of Riverside settled for \$750,000 with the
22 family of a man who was shot and killed by a sheriff's deputy working
23 for the County of Riverside;

24 (e) In *Munoz v. County of Riverside*, case number RIC120794, Plaintiff
25 argued that the involved Riverside County sheriff's deputy used deadly
26 force against her son at a time when he posed no immediate threat. The
27 jury in that case returned a \$1.2 million verdict against Defendant
28 County of Riverside in favor of Plaintiff.

1 81. By reason of the aforementioned acts and omissions, Plaintiffs have
2 suffered loss of the love, companionship, affection, comfort, care, society, training,
3 guidance, and past and future support of DECEDENT. The aforementioned acts and
4 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
5 and death.

6 82. Accordingly, Defendants COUNTY and DOES 6-10 each are liable to
7 Plaintiffs for compensatory damages under 42 U.S.C. § 1983.

8 83. Plaintiffs J.A. and A.F. bring this claim as successors in interest to
9 DECEDENT, and seek both survival and wrongful death damages under this claim.
10 Plaintiffs also seek attorney's fees under this claim.

11
12 **SEVENTH CLAIM FOR RELIEF**

13 **Municipal Liability – Unconstitutional Custom or Policy (42 U.S.C. § 1983)**

14 (By Plaintiffs J.A. and A.F. against Defendants COUNTY and DOES 6-10)

15 84. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
16 through 83 of their Complaint with the same force and effect as if fully set forth
17 herein.

18 85. Defendants HEURER, POWE, RODRIGUEZ and DOE DEPUTIES
19 acted under color of law;

20 86. Defendants HEURER, POWE, RODRIGUEZ and DOE DEPUTIES
21 acted pursuant to an expressly adopted official policy or a longstanding practice or
22 custom of the Defendant COUNTY.

23 87. On information and belief, Defendants HEURER, POWE,
24 RODRIGUEZ and DOE DEPUTIES were not disciplined, reprimanded, retrained,
25 suspended, or otherwise penalized in connection with DECEDENT's death.

26 88. Defendants COUNTY, HEURER, POWE, RODRIGUEZ and DOE
27 DEPUTIES, together with other COUNTY policymakers and supervisors,
28

1 maintained, inter alia, the following unconstitutional customs, practices, and
2 policies:

- 3 (a) Using excessive force, including excessive deadly force;
- 4 (b) Providing inadequate training regarding the use of deadly force;
- 5 (c) Employing and retaining as deputy sheriffs individuals such as
6 Defendants HEURER and POWE, RODRIGUEZ whom
7 Defendant COUNTY at all times material herein knew or
8 reasonably should have known had dangerous propensities for
9 abusing their authority and for using excessive force;
- 10 (d) Inadequately supervising, training, controlling, assigning, and
11 disciplining COUNTY deputies and other personnel, including
12 Defendants HEURER and POWE, RODRIGUEZ whom
13 Defendant COUNTY knew or in the exercise of reasonable care
14 should have known had the aforementioned propensities and
15 character traits;
- 16 (e) Maintaining grossly inadequate procedures for reporting,
17 supervising, investigating, reviewing, disciplining and
18 controlling misconduct by COUNTY deputies;
- 19 (f) Failing to adequately discipline COUNTY deputies for the
20 above-referenced categories of misconduct, including "slaps on
21 the wrist," discipline that is so slight as to be out of proportion to
22 the magnitude of the misconduct, and other inadequate discipline
23 that is tantamount to encouraging misconduct;
- 24 (g) Announcing that unjustified shootings are "within policy,"
25 including shootings that were later determined in court to be
26 unconstitutional;

- 1 (h) Even where shootings are determined in court to be
- 2 unconstitutional, refusing to discipline, terminate, or retrain the
- 3 officers involved;
- 4 (i) Encouraging, accommodating, or facilitating a “blue code of
- 5 silence,” “blue shield,” “blue wall,” “blue curtain,” “blue veil,”
- 6 or simply “code of silence,” pursuant to which police officers do
- 7 not report other officers’ errors, misconduct, or crimes. Pursuant
- 8 to this code of silence, if questioned about an incident of
- 9 misconduct involving another officer, while following the code,
- 10 the officer being questioned will claim ignorance of the other
- 11 officers’ wrongdoing; and
- 12 (j) Maintaining a policy of inaction and an attitude of indifference
- 13 towards soaring numbers of police shootings, including by
- 14 failing to discipline, retrain, investigate, terminate, and
- 15 recommend officers for criminal prosecution who participate in
- 16 shootings of unarmed people.

17 89. The following are only a few examples of continued misconduct by
18 sheriff’s deputies working for the County of Riverside, which indicate that the
19 County of Riverside maintains unconstitutional customs, practices, and/or policies:

- 20 (a) In *Howard v. County of Riverside, et al.*, case number 5:12-cv-
- 21 00700, Defendant County of Riverside argued that the use of deadly
- 22 force against an unarmed individual was reasonable; a federal jury
- 23 found otherwise and returned a \$7.8 million verdict in favor of William
- 24 Howard, an unarmed man who suffered a severe brain injury and
- 25 partial paralysis after being shot in the face by a County of Riverside
- 26 sheriff’s deputy;
- 27 (b) In *Travillion v. County of Riverside*, case number EDCV 14-0003
- 28 VAP (DTBx), the County of Riverside settled for \$350,000 with the

1 family of a man who was shot and killed by a sheriff's deputy working
2 for the County of Riverside;

3 (c) In *Bosch v. County of Riverside*, case number EDCV 13-02352
4 (SVW)(FFM), the County of Riverside settled for \$1.5 million with the
5 family of an unarmed man who was shot and killed by a sheriff's
6 deputy working for the County of Riverside at a time when the man
7 posed no immediate threat of death or serious bodily injury;

8 (d) In *Castillo v. County of Riverside*, case number EDCV 13-00789
9 VAP (SPx), the County of Riverside settled for \$750,000 with the
10 family of a man who was shot and killed by a sheriff's deputy working
11 for the County of Riverside;

12 (e) In *Munoz v. County of Riverside*, case number RIC120794, Plaintiff
13 argued that the involved Riverside County sheriff's deputy used deadly
14 force against her son at a time when he posed no immediate threat. The
15 jury in that case returned a \$1.2 million verdict against Defendant
16 County of Riverside in favor of Plaintiff.

17 90. The aforementioned unconstitutional customs, practices, and policies, in
18 addition to the ratification of the deficient customs, practices, and policies, are
19 evidenced by the number of prior cases in which a jury has found force used by a
20 deputy working for the Riverside County Sheriff's Department to be excessive and
21 unreasonable.

22 91. By reason of the aforementioned acts and omissions, Plaintiffs have
23 suffered loss of the love, companionship, affection, comfort, care, society, training,
24 guidance, and past and future support of DECEDENT. The aforementioned acts and
25 omissions also caused DECEDENT's pain and suffering, loss of enjoyment of life,
26 and death.

27 92. Defendants COUNTY and DOES 6-10, together with various other
28 officials, whether named or unnamed, had either actual or constructive knowledge

1 of the deficient policies, practices and customs alleged in the paragraphs above.
2 Despite having knowledge as stated above, these defendants condoned, tolerated and
3 through actions and inactions thereby ratified such policies. Said defendants also
4 acted with deliberate indifference to the foreseeable effects and consequences of
5 these policies with respect to the constitutional rights of DECEDENT, Plaintiffs,
6 and other individuals similarly situated.

7 93. By perpetrating, sanctioning, tolerating and ratifying the outrageous
8 conduct and other wrongful acts, DOES 6-10 acted with intentional, reckless, and
9 callous disregard for the life of DECEDENT and for DECEDENT's and Plaintiffs'
10 constitutional rights. Furthermore, the policies, practices, and customs implemented,
11 maintained, and still tolerated by Defendants COUNTY and DOES 6-10 were
12 affirmatively linked to and were a significantly influential force behind the injuries
13 of DECEDENT and Plaintiffs.

14 94. Accordingly, Defendants COUNTY and DOES 6-10 each are liable to
15 Plaintiffs for compensatory damages under 42 U.S.C. § 1983.

16 95. Plaintiffs J.A. and A.F. bring their claim individually and as successors
17 in interest to DECEDENT, and seek both survival and wrongful death damages
18 under this claim. Plaintiffs also seek attorney's fees under this claim.

19
20 **EIGHTH CLAIM FOR RELIEF**

21 **False Arrest/False Imprisonment**

22 (By all Plaintiffs against Defendants COUNTY, HEURER, POWE, and DOE
23 DEPUTIES)

24 96. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
25 through 95 of their Complaint with the same force and effect as if fully set forth
26 herein.

27 97. Defendants HEURER, POWE, and DOE DEPUTIES, while working as
28 deputy sheriffs for the Riverside County Sheriff's Department and acting within the

1 course and scope of their duties, intentionally deprived DECEDENT of his freedom
2 of movement by use of force, threats of force, menace, fraud, deceit, and
3 unreasonable duress. HEURER, POWE, and DOE DEPUTIES detained
4 DECEDENT without reasonable suspicion and arrested him without probable cause.

5 98. DECEDENT did not knowingly or voluntarily consent.

6 99. Defendants HEURER, POWE, and DOE DEPUTIES detained
7 DECEDENT for an appreciable amount of time.

8 100. The conduct of HEURER, POWE, and DOE DEPUTIES was a
9 substantial factor in causing the harm to DECEDENT.

10 101. Defendant COUNTY is vicariously liable for the wrongful acts of
11 Defendants HEURER, POWE, and DOE DEPUTIES pursuant to section 815.2(a) of
12 the California Government Code, which provides that a public entity is liable for the
13 injuries caused by its employees within the scope of the employment if the
14 employee's act would subject her or her to liability.

15 102. The conduct of HEURER, POWE, and DOE DEPUTIES was
16 malicious, wanton, oppressive, and accomplished with a conscious disregard for the
17 rights of DECEDENT, entitling Plaintiffs to an award of exemplary and punitive
18 damages.

19 103. As a result of their misconduct, Defendants HEURER, POWE, and
20 DOE DEPUTIES are liable for DECEDENT's injuries, either because they were
21 integral participants in the wrongful detention and arrest, or because they failed to
22 intervene to prevent these violations.

23 104. Plaintiffs A.F. and J.A. bring their claim as successors in interest to
24 DECEDENT, and seek wrongful death damages under this claim.

25 105. Plaintiff JECMEN brings this claim in her individual capacity and
26 seeks wrongful death damages under this claim.

NINTH CLAIM FOR RELIEF

Battery (wrongful death)

(By all Plaintiffs against Defendants COUNTY, HEURER and POWE,
RODRIGUEZ)

106. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1 through 105 of their Complaint with the same force and effect as if fully set forth herein.

107. HEURER and POWE, while working as deputy sheriffs for the Riverside County Sheriff's Department and acting within the course and scope of their duties, intentionally shot DECEDENT multiple times, thereby using unreasonable and excessive force against him.

108. RODRIGUEZ, while working for the Riverside County Sheriff's Department and acting within the course and scope of his duties, intentionally caused a K-9 to be released on DECEDENT after he had already been shot, thereby using unreasonable and excessive force against him.

109. As a result of the actions of HEURER, RODRIGUEZ and POWE, DECEDENT suffered severe pain and suffering and ultimately died from his injuries. HEURER, RODRIGUEZ and POWE had no legal justification for using force against DECEDENT, and their use of force while carrying out their duties as sheriff's deputies was an unreasonable and nonprivileged use of force.

110. As a direct and proximate result of the conduct of HEURER, POWE, RODRIGUEZ and DOE DEPUTIES as alleged above, DECEDENT sustained injuries and died from his injuries and also lost his earning capacity and suffered survival damages pursuant to Code of Civil Procedure Section 377.34.

111. The COUNTY is vicariously liable for the wrongful acts of HEURER, RODRIGUEZ, and POWE pursuant to section 815.2(a) of the California Government Code, which provides that a public entity is liable for the injuries

1 caused by its employees within the scope of the employment if the employee's act
2 would subject her or her to liability.

3 112. The conduct of HEURER, POWE, RODRIGUEZ, and DOE
4 DEPUTIES was malicious, wanton, oppressive, and accomplished with a conscious
5 disregard for the rights of Plaintiffs and DECEDENT, entitling Plaintiffs,
6 individually and as successors in interest to DECEDENT, to an award of exemplary
7 and punitive damages as to Defendants HEURER, POWE, and RODRIGUEZ.

8 113. Plaintiffs A.F. and J.A. bring their claim as successors in interest to
9 DECEDENT, and seek wrongful death damages under this claim. Plaintiff
10 JECMEN brings this claim in her individual capacity and seeks wrongful death
11 damages under this claim.

12
13 **TENTH CLAIM FOR RELIEF**

14 **Negligence (wrongful death)**

15 (By all Plaintiffs against all Defendants)

16 114. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
17 through 113 of their Complaint with the same force and effect as if fully set forth
18 herein.

19 115. Deputy Sheriffs, including Defendants HEURER, POWE,
20 RODRIGUEZ, and DOE DEPUTIES, have a duty to use reasonable care to prevent
21 harm or injury to others. This duty includes using appropriate tactics, giving
22 appropriate commands, giving warnings, and not using any force unless necessary,
23 using less than lethal options, and only using deadly force as a last resort.

24 116. Defendants HEURER, POWE, RODRIGUEZ, and DOES 3-10
25 breached their duty of care. The actions and inactions of Defendants HEURER,
26 POWE, and DOES 3-10 were negligent and reckless, including but not limited to:

- 1 (a) the failure to properly and adequately assess the need to detain,
- 2 arrest, and use force or deadly force against DECEDENT,
- 3 including the shooting and the release of the K-9;
- 4 (b) the negligent tactics and handling of the situation with
- 5 DECEDENT, including pre-shooting negligence and causing the
- 6 K-9 to be released;
- 7 (c) the negligent detention, arrest, and use of force, including deadly
- 8 force, against DECEDENT;
- 9 (d) the failure to provide prompt medical care to DECEDENT;
- 10 (e) the failure to properly train and supervise employees, both
- 11 professional and non-professional, including HEURER, POWE,
- 12 and DOE DEPUTIES;
- 13 (f) the failure to ensure that adequate numbers of employees with
- 14 appropriate education and training were available to meet the
- 15 needs of and protect the rights of DECEDENT; and
- 16 (g) the negligent communication of information during the incident.

17 117. As a direct and proximate result of Defendants' conduct as alleged
18 above, and other undiscovered negligent conduct, DECEDENT was caused to suffer
19 severe pain and suffering and ultimately died. Also as a direct and proximate result
20 of Defendants' conduct as alleged above, Plaintiffs have suffered emotional distress
21 and mental anguish. Plaintiffs also have been deprived of the life-long love,
22 companionship, comfort, support, society, care and sustenance of DECEDENT, and
23 will continue to be so deprived for the remainder of their natural lives.

24 118. The COUNTY is vicariously liable for the wrongful acts of Defendants
25 HEURER, POWE, RODRIGUEZ and DOES 3-10 pursuant to section 815.2(a) of
26 the California Government Code, which provides that a public entity is liable for the
27 injuries caused by its employees within the scope of the employment if the
28 employee's act would subject her or her to liability.

1 119. Plaintiffs J.A. and A.F. bring this claim as successors in interest to
2 DECEDENT, and seek wrongful death damages under this claim.

3
4 **ELEVENTH CLAIM FOR RELIEF**

5 **(Violation of Cal. Civil Code § 52.1)**

6 **(By all Plaintiffs against all Defendants)**

7 120. Plaintiffs repeat and re-allege each and every allegation in paragraphs 1
8 through 119 of their Complaint with the same force and effect as if fully set forth
9 herein.

10 121. California Civil Code, Section 52.1 (the Bane Act), prohibits any
11 person from using violent acts or threatening to commit violent acts in retaliation
12 against another person for exercising that person's constitutional rights.

13 122. On information and belief, Defendants HEURER, POWE,
14 RODRIGUEZ and DOE DEPUTIES, while working for the COUNTY and acting
15 within the course and scope of their duties, intentionally committed and attempted to
16 commit acts of violence against DECEDENT, including by shooting him without
17 justification or excuse, by integrally participating and failing to intervene in the
18 above violence, by causing the K-9 to be released, and by denying him necessary
19 medical care.

20 123. When Defendants shot DECEDENT and allowed him to lie bleeding on
21 the pavement, and also when they caused the K-9 to be released, they interfered with
22 his civil rights to be free from unreasonable searches and seizures, to due process, to
23 equal protection of the laws, to medical care, to be free from state actions that shock
24 the conscience, and to life, liberty, and property.

25 124. On information and belief, Defendants intentionally and spitefully
26 committed the above acts to discourage DECEDENT from exercising his civil
27 rights, to retaliate against him for invoking such rights, or to prevent him from
28 exercising such rights, which he was fully entitled to enjoy.

1 125. On information and belief, DECEDENT reasonably believed and
2 understood that the violent acts committed by Defendants HEURER, POWE,
3 RODRIGUEZ, and DOE DEPUTIES were intended to discourage him from
4 exercising the above civil rights, to retaliate against them, or invoking such rights, or
5 to prevent him from exercising such rights.

6 126. Defendants successfully interfered with the above civil rights of
7 DECEDENT and Plaintiffs.

8 127. The conduct of Defendants HEURER, POWE, RODRIGUEZ and DOE
9 DEPUTIES was a substantial factor in causing Plaintiffs' harms, losses, injuries, and
10 damages.

11 128. The COUNTY is vicariously liable for the wrongful acts of Defendants
12 HEURER, POWE, RODRIGUEZ and DOE DEPUTIES pursuant to section
13 815.2(a) of the California Government Code, which provides that a public entity is
14 liable for the injuries caused by its employees within the scope of the employment if
15 the employee's act would subject him or her to liability.

16 129. Defendants DOES 6-10 are vicariously liable under California law and
17 the doctrine of *respondeat superior*.

18 130. The conduct of Defendants was malicious, wanton, oppressive, and
19 accomplished with a conscious disregard for DECEDENT's and Plaintiffs' rights,
20 justifying an award of exemplary and punitive damages as to Defendants HEURER,
21 POWE, RODRIGUEZ and DOE DEPUTIES.

22 131. Plaintiffs seek attorney's fees under this claim.
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28

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Teri Jecmen, A.F., and J.A. request entry of judgment in their favor and against Defendants County of Riverside, Michael Heurer, Robert Powe, Chad Fountain, Sergio Rodriguez, and Does 3-10, inclusive, as follows:

- A. For compensatory damages, including both survival damages and wrongful death damages under federal and state law, in the amount to be proven at trial;
- B. For funeral and burial expenses, and loss of financial support;
- C. For punitive damages against the individual defendants in an amount to be proven at trial;
- D. For interest;
- E. For reasonable attorneys' fees, including litigation expenses;
- F. For costs of suit; and
- G. For such further other relief as the Court may deem just, proper, and appropriate.

DATED: July 21, 2016

LAW OFFICES OF DALE K. GALIPO

By /s/ Dale K. Galipo
Dale K. Galipo
Attorneys for Plaintiffs

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a trial by jury.

3
4 DATED: July 21, 2016

LAW OFFICES OF DALE K. GALIPO

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6 Bv /s/ Dale K. Galipo

7 Dale K. Galipo
8 Attorneys for Plaintiffs
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